

LETTER OPINION
73-265

January 4, 1973 (OPINION)

Mr. J. O. Wigen
Commissioner of Insurance
Insurance Department
State Capitol
Bismarck, ND 58501

Dear Mr. Wigen:

This is in response to your letter of December 19, 1972, wherein you request an opinion of this office regarding section 26-31-01 of the North Dakota Century Code, relating to automobile warranties. You submit the following facts and inquiry in your letter:

"We would appreciate your opinion on the interpretation of section 26-31-03 of the North Dakota Century Code. The question is 'Should the commissioner of insurance require the cash surety bond as prescribed by such section in the following situation.' Resolute Insurance Company, a Rhode Island corporation, with executive offices in Hartford, Connecticut, has a certificate of authority to transact the business of all forms of insurance permitted by law other than life insurance. It has a capital of \$1,000,000 and surplus of \$11,000,000, and it meets all requirements for licensing. It has filed an automobile policy and other forms (photocopies are enclosed) which have been approved by the insurance department. "This would appear to fit into the same category as any other automobile physical damage policy."

In the first instance we should note the text of section 26-31-03 of the North Dakota Century Code which provides as follows:

"26-31-03. AUTOMOBILE WARRANTIES CONSIDERED INSURANCE - SURETY BOND. Any company engaged in the issuance of car warranty insurance policies shall be considered an insurance company and subject to the fees specified by law to be paid by insurance companies. Before an automobile warranty insurance company shall be authorized to transact business in this state, the commissioner of insurance shall require it to file with him a cash surety bond in the sum of one hundred thousand dollars on such form as shall be prescribed by the commissioner.
(emphasis supplied)

We note that the foregoing provision is a part of chapter 26-31 of the North Dakota Century Code and that the same applies specifically to automobile warranties. Examination of the policy form which has been submitted indicates that the same is an extended automobile warranty policy, effective for a period of 36 months or 36,000 miles, whichever occurs first, excluding terms or warranties of automobile manufacturer.

Further, the policy specifically provides;

"This policy does not provide bodily injury and property damage liability insurance or any other coverage for which a specific premium change is not made and does not comply with any financial responsibility law."

Without quoting in detail the various coverages in the said policy form, it appears clear that the same is an "automobile warranty" policy within the contemplation of the statute.

You state in your letter that the subject company "has a certificate of authority to transact the business of all forms of insurance permitted by law other than life insurance. In this connection we would note that there is specific requirement with regard to the sale of automobile warranty type of insurance. While the certificate of authority grants the right to engage in the insurance business, we do not believe that such is extensive over areas wherein there is specific provision and requirements. We note that a specific certificate of authority is contemplated by chapter 26-31 of the North Dakota Century Code and is set forth in section 26-31-02 thereof, providing as follows:

"26-31-02. CERTIFICATE OF AUTHORITY - ISSUANCE - QUALIFICATIONS - RENEWAL. No person, firm, corporation or association shall engage in the business of providing or writing automobile warranty insurance without first having obtained from the commissioner of insurance a certificate of authority to issue automobile warranty insurance policies. The commissioner of insurance shall not issue a certificate of authority to issue automobile warranty insurance policies unless he shall be satisfied by the submittal of evidence as he may reasonably require that such company is qualified in accordance with the laws of this state governing insurance companies, to transact business in this state under the laws thereof. Each certificate of authority issued under any provisions of this chapter shall expire on the thirtieth day of April succeeding the date of issuance, and renewal thereof may be issued by the commissioner when he is satisfied that such company is qualified to transact business in this state under the laws thereof. Each certificate of authority issued under any provisions of this chapter shall expire on the thirtieth day of April succeeding the date of issuance, and renewal thereof may be issued by the commissioner when he is satisfied that such company is qualified to transact business in this state under the laws thereof." (emphasis supplied)

Since the statute specifically requires the filing of a cash surety bond in the amount of one hundred thousand dollars by companies engaging in the sale and issuance of automobile warranty insurance policies, it would appear that such requirement is a prerequisite to the issuance of a certificate of authority authorizing such transaction of business and engaging in the automobile warranty insurance business.

We would also note that section 26-31-06 of the North Dakota Century Code, relating to penalties, provides as follows:

"26-31-06. PENALTY. Any person, firm or association who shall

engage in the sale of furnishing of care warranties in this state without complying with the provisions of this chapter shall be guilty of a misdemeanor and punishable by a fine of one thousand dollars or imprisonment in the county jail for not more than one year or both such fine and imprisonment." (emphasis supplied)

Accordingly, it appears clear that the provisions of chapter 26-31 apply to all firms, persons or associations engaging in the sale or furnishing of car warranties in this state. This would include section 26-31-03 thereof, relating to the filing of cash surety bond.

In conclusion, we are of the opinion that the provisions of section 26-31-03 of the North Dakota Century Code, requiring the filing of a cash surety bond in the amount of one hundred thousand dollars is a prerequisite to the issuance of a certificate of authority to engage in the business of automobile warranty insurance and that any person, firm or association must have a certificate of authority to engage in such specific type of insurance business or to issue any such insurance contracts or policies.

We trust that the foregoing observations, comments, information and expressions will adequately set for the opinion of this office upon the matters submitted.

Sincerely yours,

Allen I. Olson

Attorney General